IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11945 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJPUT PAVANKUMAR HANSRAJ

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR PK SHUKLA AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the District Magistrate, Mehsana, on 6th July, 2000 in exercise of powers conferred upon him under

Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 6th July, 2000 in pursuance of the above said order.

2. The detaining authority relied upon the 4 crimes registered against the petitioner under the Bombay Prohibition Act and the complaints filed in these cases including the investigation made by the concerned Investigation Officer. In addition to this, the detaining authority has placed reliance on statements of two witnesses recorded on 31st March, 2000 and 2nd April, 2000 respectively, who have offered their statements against the petitioner on assurance of anonymity of identity to the extent that the petitioner was indulging in selling of illegal liquor and was a headstrong person and hardened criminal. From the above materials, the detaining authority came to the conclusion that the petitioner was a "bootlegger" within the meaning of Section 2(b) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Ms. D.R. Kacchavah for the petitioner and learned AGP Mr.P.K.Shukla for the respondents were heard.

4. Amongst various grounds it was vehemently urged against the order of detention that there is a delay in passing of the order vitiating the order of detention. It was urged that last crime against the petitioner came to be registered on 23rd February, 2000. Thereafter, the statements of the witnesses have been recorded on 31st of March, 2000 and 2nd of April, 2000. The order of detention came to be passed only on 6th of July, 2000. Thus, delay has resulted in vitiating the order of detention.

5. Having regard to the rival contentions and scrutinising the record, it appears that the facts of the case are squarely covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. This Court after relying upon the ratio laid down by the Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in 1993 (2) Suppl. SCC 61, came to the conclusion that the order of detention was required to be set aside due to unexplained delay in passing of the order. In this case also,the fact denotes that the last crime relied upon the by the detaining authority was registered against the petition only on 23rd of February, 2000 and thereafter the statements of the witnesses whose

identities kept secret has been recorded only on 31st March, 2000 and 2nd April, 2000, who narrated the incidents of 14th February, 2000 and 25th March, 2000. Thereafter,the order was passed on 6th of July, 2000. This delay has not been explained by the detaining authority in passing of the order of the detention against the petitioner. Applying the ratio of the above said decision of this court, which in turn has relied on the decision of the Apex Court as aforesaid, the order of detention is required to the set aside on the ground of delay.

6. In view of the above discussion, this petition is allowed. The order passed by the District Magistrate, Mehsana, on 6th July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Rajput Pavankumar Hansraj is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair